SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. ~~632~~ 16

SGT. JESSE E. SNAPP, PETITIONER,

vs.

HONORABLE W. D. NEAL, STATE AUDITOR, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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[fol. 1] [Caption omitted]

[fol. 2]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

In Vacation 1963.

No. 15,670

SGT. JESSE E. SNAPP, Petitioner,

vs.

HONORABLE W. D. NEAL, State Auditor of Public Accounts, State of Mississippi, and HONORABLE JOE T. PATTERSON, Attorney General of the State of Mississippi, Defendants.

(Appeal by Complainant, Sgt. Jesse E. Snapp, from "FINAL DECREE" of August 13, 1963.)

APPEARANCES:

Hon. Jack McDill, Assistant to Robert E. Hauberg, United States Attorney, Southern District of Mississippi, Jackson, Mississippi, Present and Representing the Complainant * (Appellant)

Hon. Martin R. McLendon, Assistant Attorney General of the State of Mississippi, Jackson, Mississippi, Present and Representing the Defendants (Appellees).

[fol. 3]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

JULY, 1963, TERM

Number 15,670

[Title omitted]

PETITION FOR APPEAL AND REVIEW—Filed June 26, 1963

To the Honorable Chancellor of the Chancery Court in and for Copiah County, Mississippi:

Comes now Sgt. Jesse E. Snapp, petitioner, and files his petition for appeal and review under Section 9979, Mississippi Code of 1942, Recompiled, as amended, from the decision of Honorable W. D. Neal, State Auditor of Public Accounts and Honorable Joe T. Patterson, Attorney General of the State of Mississippi, defendants, rendered April 4, 1963, denying the application of petitioner for refund of taxes paid by petitioner on his house trailer; and in support of this petition, petitioner respectfully represents:

1. Petitioner attaches hereto a cost bond in the sum of $500.00 conditioned to pay all costs which may be assessed against him in this case.

2. On December 28, 1962, petitioner was required by the Sheriff of Copiah County, Mississippi, to pay the sum of $38.50 as a tax on petitioner's house trailer under Chapter 535 of the Laws of 1962 of the State of Mississippi. The aforesaid sum was paid under protest by petitioner and he alone bore the burden of this payment and did not directly or indirectly collect the tax from any other person.

[fol. 4] 3. On February 6, 1963, petitioner filed an application for refund of the taxes paid with the State Auditor of Public Accounts and submitted affidavits and other evidence in support of his application. Petitioner based his application for refund on the ground, among others, that assessment and collection of taxes was and is forbidden by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, particularly Section 574 of Title 50, Appendix,

United States Code. Petitioner is advised and believes that the State Auditor of Public Accounts has the entire record of Petitioner's claim in the files in his office.

4. Under date of April 5, 1963, the State Auditor of Public Accounts denied the application of Sgt. Snapp for a refund and attached to his notification an opinion of the Attorney General of the State of Mississippi rendered April 4, 1963, wherein the Attorney General disapproved petitioner's application for refund.

Wherefore, petitioner being aggrieved at the disapproval and denial of his application for refund prays that the Clerk of this Court will approve and file the bond attached hereto and will give notice to Honorable Joe T. Patterson, Attorney General of the State of Mississippi and Honorable W. D. Neal, State Auditor of Public Accounts, as required by law, of the filing of this petition; and,

Petitioner further prays that this Honorable Court will cause the said Auditor to promptly transmit to this Court a certified copy of the entire record of the claim of petitioner for refund and that this cause will be docketed for trial upon such record; and,

Petitioner prays that upon appeal and review of the record and upon a hearing of this petition this Honorable Court will direct the State Auditor of Public Accounts to [fol. 5] pay unto petitioner the sum of $38.50 for the house trailer taxes illegally and unlawfully assessed and collected and will absolve petitioner from necessity for the payment of court costs and direct that the cost bond filed in this action be cancelled and the principal and sureties thereon discharged; and,

Your petitioner prays for such other relief, either general or special, which the Court deems meet; and,

As in duty bound petitioner will ever pray.

Sgt. Jesse E. Snapp, Petitioner.

Duly sworn to by Sgt. Jesse E. Snapp, jurat omitted in printing.

[File endorsement omitted]

[fol. 8] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

Number 15,670

[Title omitted]

ORDER FOR TRANSMITTAL OF CERTIFIED COPY OF ENTIRE RECORD—June 28, 1963

This day came on to be considered the prayer of the petitioner that this court cause the State Auditor of Public Accounts to transmit a certified copy of the entire record of the claim of petitioner for a refund of taxes; and,

The court having carefully considered this matter is of the opinion that the State Auditor of Public Accounts should transmit forthwith such copy of the aforesaid record to the Clerk of this Court so that this cause may be docketed for trial upon said record.

It Is Therefore, Ordered, Adjudged and Decreed that the State Auditor of Public Accounts shall promptly transmit a certified copy of the entire record of the claim of petitioner for a refund of taxes to the Clerk of this Court; and, the Clerk of this Court is hereby directed to mail a certified copy of this Order to the Auditor of Public Accounts together with a certified copy of the petition filed by Sgt. Jesse E. Snapp in this Court.

So Ordered, Adjudged and Decreed this 28th day of June, A. D. 1963.

Mike Carr, Chancellor.

[fol. 9] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

JULY, 1963, TERM

Number 15,670

[Title omitted]

MOTION TO CONTINUE CAUSE TO VACATION TIME—
Filed July 8, 1963

Comes Now petitioner, Jesse E. Snapp, and moves the Court to continue this cause to a time in vacation to be heard upon the pleadings, the record of the State Auditor of Public Accounts and argument of counsel, and that thereafter a decree be rendered and entered on the minutes of this Court in vacation all with the same force and effect as though done during a regular term of this Honorable Court.

Respectfully submitted,

Jesse E. Snapp, Petitioner, By: Jack McDill, His Attorney.

It Is Agreed That This Cause May Be Heard and a Decree Effectively Rendered Thereon in Vacation.

Martin R. McLendon, Attorney for Defendants.

[fol. 10] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

JULY 1963 TERM

No. 15,670

[Title omitted]

ORDER CONTINUING CAUSE TO VACATION TIME—July 8, 1963

This day came on to be heard the motion of petitioner, Sgt. Jesse E. Snapp, to continue this case for hearing and rendition of a decree on his petition to a time in vacation; and, the Court having heard and carefully considered said motion and being advised that the defendants have joined in said motion & have entered their appearance herein and have no objection thereto and have agreed that this cause may be heard and a decree rendered thereon in vacation, is of the opinion that the motion should be and it is hereby sustained.

It is, therefore, Ordered, Adjudged and Decreed that this cause shall be continued to a time in Vacation to be agreed upon by all parties hereto and then heard upon all of the pleadings, the record of the State Auditor of Public Accounts and argument of counsel and a final decree rendered and entered upon the minutes of this Court, all with the same force and effect as though done at and during a regular Term of this Court.

So Ordered, Adjudged and Decreed, during a regular term of this Court, this the 8th day of July, A.D., 1963.

Mike Carr, Chancellor.

Approved: Martin R. McLendon, Attorney for Defendants.

[fol. 11] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

CERTIFICATE OF W. D. NEAL, STATE AUDITOR—
Filed July 13, 1963

DEPARTMENT OF PUBLIC ACCOUNTS
STATE OF MISSISSIPPI
William D. Neal, State Auditor

Robert S. Scott
Chief Accountant

J. S. McIlwain
Assistant State Auditor

T. R. Tomlinson
Computer Supervisor

JACKSON

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, W. D. Neal, duly elected qualified and acting Auditor of Public Accounts, State of Mississippi, and Custodian of the Records thereof, do hereby certify that attached hereto is a true, correct, complete copy of all the papers and records on file in this office concerning the application for Ad valorem Tax Refund of Sergeant Jesse E. Snapp.

This the 12th day of July, 1963.

(Signed) W. D. Neal
State Auditor

[fol. 12]

ATTACHMENTS TO CERTIFICATE OF W. D. NEAL

DEPARTMENT OF PUBLIC ACCOUNTS

THIS CLAIM WILL NOT BE PAID IF ANY PAPER IS DETACHED.

STATE OF MISSISSIPPI

To Sgt. Jesse E. Snapp Dr.
Box 539, Crystal Springs, Miss.

for amount due on account of erroneous payment into the State Treasury of taxes, for the fiscal year ..... asper vouchers and evidence, on which such claim is based, filed herewith, on the following property, in the County of ..... as per the following statement:

Description	State Tax	County Tax	Adval'm
1959 Skyline Trailer $460.00 @ 4 Mil.	$1.84	$22.66	Reg. $2.50

State Tax	$ 1.84
County Tax	22.66
Reg. Fees	2.50
City of Crystal Springs	11.50
	$38.50

STATE TAX
LESS TAX COLLECTOR'S COMMISSIONS
NET AMOUNT TO BE REFUNDED by State $1.84

ATTORNEY GENERAL, MISSISSIPPI

I have this ..... day of ....., 194...., audited the claim of the above named claimant and find the amounts due him, according to his contention, is as above stated.

I now refer the audited claim and the evidence on which it is based to you for your inspection and approval or disapproval, as the case may be, and advise as to whether this refund can now be legally made by this department.

[fol. 13]

W. D. Neal
Auditor of Public Accounts

J. S. McIlWain
Deputy Auditor

Approved, this ..... day of ....., 194....

.....
Attorney General

.....
Assistant Attorney General

RECEIVED of the Auditor of Public Accounts, Pay Warrant No. ..... for $..... in full of the above claim against the State.

Jackson, Mississippi, ..., 194.....

(Sign here) .....
Claimant

Sign above receipt without detaching any papers from this sheet and return this sheet to the Auditor's Office, Jackson, Mississippi, and Pay Warrant will be sent wherever you direct on the lines below.

Send Auditor's Pay Warrant to ....., Mississippi

[fol. 14]

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
Southern District of Mississippi
Jackson 5, Mississippi.
February 6, 1963.

Honorable William D. Neal
Auditor of Public Accounts
State of Mississippi
Woolfolk Building
Jackson, Mississippi

Re: Application for Refund of payment to Tax Collector, Copiah County, of ad valorem assessment on house trailers by Sgt. Jesse E. Snapp and Sgt. George E. Wandler

Sir:

Enclosed are applications for refund by Sgt. Jesse E. Snapp and Sgt. George E. Wandler, members of the United States Air Force stationed at Crystal Springs Air Force Station, Crystal Springs, Mississippi. You will note that Sgt. Snapp's trailer is located within the corporate limits of Crystal Springs on realty that he does not own and not on the military reservation. Sgt. Wandler's trailer is located on the military station on realty owned by the United States.

We have discussed this matter with Assistant Attorney General Martin R. McClendon and Mrs. John E. Stone, Attorney for the State Tax Commission, and they are conversant with our views and of the various issues involved. We have the original tax receipts in our files and will forward them to you if you desire, as well as assist in procuring any and all information you may require. We are taking the liberty of forwarding copies of this letter

and the applications to Messrs. McClendon and Stone except that copies of the photographs submitted with the original applications attached as Exhibit "A" are not readily available to us; however, we believe that Mr. McClendon and Mr. Stone have seen similar photographs.

We also submit a memorandum in support of both of the [fol. 15] applications which expresses our view. It will be appreciated if you will advise us as to anything that we may do to facilitate any investigation you desire and of any hearing and we would, of course, be pleased to receive notice of a determination favorable to the taxpayers.

We respectfully request that you receive the applications for filing and advise us of the date of filing.

Respectfully,

Robert E. Hauberg
United States Attorney

By: Jack McDill
JACK McDILL

JM/jb
Enclosures

cc: S/Sgt. George E. Wandler
Crystal Heights
Crystal Springs Air Force Station
Crystal Springs, Mississippi

S/Sgt. Jesse E. Snapp
Box 539
Crystal Springs Air Force Station
Crystal Springs, Mississippi

Department of Justice
Washington 25, D. C.

Colonel Sam F. Carter
Staff Judge Advocate
Keesler Air Force Base, Mississippi

Captain Robert A. Moline, USAF
Administrative Officer
627th Radar Squadron (SAGE)
Crystal Springs Air Force Station
Crystal Springs, Mississippi

Mr. Woodrow Purser
Sheriff and Tax Collector
Hazlehurst, Mississippi

Honorable Martin R. McClendon
Assistant Attorney General
State of Mississippi
New Capitol Building
Jackson, Mississippi

Honorable John E. Stone
Attorney at Law
State Tax Commission
Woolfolk Building
Jackson, Mississippi

[fol. 16] APPLICATION FOR REFUND

TO THE HONORABLE AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF MISSISSIPPI:

Now comes your petitioner, Jesse E. Snapp, and files this petition for refund under Section 9979 of the Mississippi Code of 1942, as amended and in support of his petition respectfully avers that:

I

This application relates to the payment by petitioner, under protest, of an assessment under House Bill No. 747, Laws of 1962, with respect to the house trailer in which he has lived since prior to November 1, 1962 (hereinafter referred to as the "Trailer").

II

At all times since October 28, 1961, petitioner has been and is a member of the United States Air Force on active duty and stationed at Crystal Springs Air Force Base in Copiah County, Mississippi. Petitioner is a Staff Sergeant, serial number AF 14443338, and is assigned as a permanent party at this base but may be ordered to duty elsewhere at any time.

III

Petitioner is, and at all times since his re-entry into military service on October 29, 1951, has been, a resident of and domiciled in Pacolet, South Carolina. At all times since October 28, 1961, petitioner's presence in the State of Mississippi and his absence from the State of South Carolina have been solely by reason of his compliance with military orders. Petitioner is a registered voter of the State of South Carolina, has relatives who are resident and domiciled there, and intends to return to and live in South Carolina upon the termination of his military service. At no time since his said re-entry into military service has [fol. 17] petitioner intended to lose or abandon his residence or domicile in South Carolina or to acquire any residence or domicile in Mississippi or elsewhere outside of South Carolina.

IV

The Trailer was purchased on May 16, 1959, and it has been in Mississippi since prior to November 1, 1962. The Trailer is a "house trailer" as defined by Section 2(a) of said House Bill No. 747 and is not and never has been registered or taxed under authority of Chapter 588, Laws of 1958 of Mississippi.

V

The Trailer was not registered on November 1, 1962, or at any time thereafter, under the laws of South Carolina or of any other state; nor did petitioner pay any taxes to South Carolina or any other state with respect to the

Trailer for any period beginning on or after November 1, 1962.

VI

The Trailer is, and at all times since November 1, 1962, has been parked at Sojourner's Trailer Court, 252 Cayuga Street, Crystal Springs, Copiah County, Mississippi, privately owned property in which petitioner does not have any interest.

VII

The Trailer is, and at all times since prior to November 1, 1962, has been, connected to a water main by means of a flexible plastic hose, to a sewer line by means of a four-inch galvanized pipe, and to electric power by a removable plug. All utility connections are easily detachable and detachment will not, in any manner, damage the Trailer, the realty upon which the Trailer is parked or any of said connections. At all times since prior to November 1, 1962, the Trailer has had wheels attached on which it could be moved on the public highways of the state, but has been and is supported by concrete blocks to stabilize it. The concrete blocks always have been and are easily removable without any [fol. 18] damage to the Trailer or the realty on which it is parked. The attached photograph, Exhibit "A", is a fair representation of the Trailer and how it is and has been parked and connected to utilities at all times since prior to November 1, 1962. The Trailer is not now and never has been, self-propelled.

VIII

Attached hereto marked Exhibit "B", and hereby made part hereof is a copy of a letter dated December 15, 1962, which petitioner received from the Sheriff and Tax Collector of Copiah County. Because of the demand and threats made therein, petitioner, on December 28, 1962, paid the Sheriff and Tax Collector of Copiah County, under protest, the sum of $38.50, in payment of the assessment made with respect to the Trailer under House Bill No. 727, Laws of 1962, for which he received Tax Receipt No. 11339.

IX

Petitioner alone has borne the burden of said assessment and has not, directly or indirectly, passed on or received reimbursement or collected payment for, any portion of said sum paid by him, to or from any party, and stands ready to submit, upon request, said receipt.

X

The Trailer is, and at all times since prior to November 1, 1962, has been, personal property within the meaning of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. (50 U.S.C. App. Section 574) By reason of petitioner's residence and domicile in South Carolina at all times since prior to November 1, 1962, and the provisions of said Section 514, the Trailer may not be deemed to be or to have been located or present in or to have had a situs for taxation in Mississippi on or at any time after November 1, 1962.

XI

[fol. 19] Said assessment and collection thereof were erroneously and illegally made and received, in violation of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. App. Section 574) and the Constitution of the United States and petitioner is justly entitled to refund of said payment made by him with interest thereon.

WHEREFORE, petitioner requests that the Auditor of Public Accounts and all other officers of the State of Mississippi and Copiah County empowered in the premises, determine that petitioner is entitled to, and order, direct, and make refund to him of sums aggregating $38.50, with interest thereon from December 28, 1962.

Respectfully submitted,

Jesse E. Snapp
STAFF SERGEANT JESSE E. SNAPP
Petitioner

STATE OF MISSISSIPPI
COUNTY OF COPIAH

Personally came and appeared before me, the undersigned authority authorized to administer oaths in the County and State aforesaid Staff Sergeant Jesse E. Snapp, a member of the United States Air Force on active duty, who, being by me first duly sworn, deposes and says:

The matters and things stated to be true in the foregoing petition are true as therein stated upon the personal knowledge of petitioner; and,

The matters and things stated to be true upon information and belief are upon trustworthy information which petitioner verily believes to be true.

Jesse E. Snapp
STAFF SERGEANT JESSE E. SNAPP

SWORN TO And subscribed before me this the 4th day of February, A.D., 1963.

Gladys Wallace

[fol. 21]

EXHIBIT "B" TO APPLICATION OF JESSE E. SNAPP

COPY

Office of
WOODROW PURSER
Sheriff and Tax Collector
Copiah County
Hazlehurst, Miss.

Dec. 15, 1962

Mr. Jessie E. Snapp
Box 539
Crystal Springs AFS
Crystal Springs, Miss.

Dear Sir:

Under the provisions of House Bill No. 747 of the General Laws of the State of Mississippi of 1962, you are hereby

notified that under authority of the aforesaid statute, taxes have been assessed and levied on one house trailer owned by you and located in Copiah County, Mississippi, in the amount of $51.02, and that said taxes are now due and owing by you. These taxes became due and payable on or before November 1, 1962, and became delinquent within thirty days thereafter.

If these taxes are not paid in full by January 1, 1963, then I, as Tax Collector of Copiah County, Mississippi, by law, will sell said house trailer for such delinquent taxes, plus 25 per cent damages and interest and other costs, during legal house on Monday, January 28, 1963, after due notice of said sale has been published in a newspaper in Copiah County, Mississippi.

Respectfully yours,

.....

Sheriff and Tax Collector
Copiah County, Mississippi

[fol. 22]

MEMORANDUM IN SUPPORT OF APPLICATIONS OF NONRESIDENT SERVICEMEN FOR REFUND OF ASSESSMENTS MADE AND PAID UNDER HOUSE BILL No. 747, LAWS OF 1962—February, 1963

As appears from the petitions (Par. IV) the house trailers here involved fall within the purview of House Bill No. 747. However, as also appears from the petitions (Par. III), petitioners are, and since prior to November 1, 1962, have been domiciled and resident outside Mississippi. The propriety of the assessments here involved depends, therefore, on whether they are permitted or forbidden by Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. App. Section 574) which provides:

(1) For the purposes of taxation in respect of any person, or of his personal property, . . . by any State, . . .

> or political subdivision, . . . such person shall not be deemed to have lost a residence or domicile in any State . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become a resident in or a resident of, any other State, . . . or political subdivision . . . while, and solely by reason of being, so absent. For the purpose of taxation in respect of the personal property . . . of any such person by any State, . . . or political subdivision . . . of which such person is not a resident or in which he is not domiciled, . . . personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, . . . or political subdivision. . . .

[fol. 23]

> (2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof: *Provided,* That the license, fee or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

Since the house trailers are personal property and petitioners were and are nonresidents of Mississippi, the trailers have not had any situs for taxation in Mississippi. This is true even though petitioners have not registered or paid any taxes with respect to their house trailers under the laws of any other State. (*Dameron* v. *Brodhead,* 345 U.S. 322)

The proviso at the end of subdivision (2) is not applicable here for two reasons. First, the trailers here taxed are not "motor vehicles" and second, the charges imposed are not for a "license, fee or excise."

Surely the house trailers are not "motor vehicles" within the common usage of that term. As appears from the peti-

tions, (Par. VII), they are not self-propelled, and, within the definition of Section "(a) of House Bill No. 747, they are "drawn or moved by motive power not (their) own." It is reasonable to assume that Congress did not intend "motor vehicle" as used in the proviso, to include trailers such as are here involved. Moreover, the proviso is inapplicable here even if the trailers are assumed to be "motor vehicles". For House Bill No. 747 clearly imposes an "ad valorem tax," whereas the proviso deals only with a "license, fee, or excise." True, each assessment includes [fol. 24] $2.50 for what is denominated a "registration fee." However, in considering the validity of a state tax "we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it." (*Lawrence* v. *State Tax Commission,* 286 U. S. 276, 280) Here, under Section 3 of House Bill No. 747, the "ad valorem tax" must be paid before a house trailer may be registered. In practical operation and effect, therefore, the "registration fee" is inseparable and indistinguishable from the "ad valorem tax." Thus, it too is necessarily barred by Section 514 of the Soldiers' and Sailors' Civil Relief Act.

Nor can the applicability of House Bill No. 747 to nonresident servicemen be saved by the contention that the trailers are realty rather than personal property. True, if realty, Section 514 does not create any impediment to taxation of the trailers. However, if realty, no tax is imposed on the trailers by House Bill No. 747. For, by its terms, it taxes only personalty. This is apparent not only from Sections "(a) and 8 of the Bill, but particularly from the past paragraph of Section 10 which provides: "Any house trailer or mobile home sold under authority of this act for unpaid taxes thereon shall be sold by the sheriff as other personal property is sold * * *." However, whether House Bill No. 747, as here applied, is a tax on personal property within the meaning of the Soldiers' and Sailors' Civil Relief Act, is a federal question. "Where a federal right is concerned we are not bound by the characterization given to a state tax by state courts or legislatures,

or relieved by it from the duty of considering the real nature of the tax and its effect upon the federal right asserted." (*U. S.* v. *Allegheny County,* 322 U. S. 174, 184, quoting from *Carpenter* v. *Shaw,* 280 U. S. 363, 367-368) Clearly, by its terms and as here applied, House Bill No. 747 taxes personalty within the meaning and in violation of Section 514 of the Soldiers' and Sailors' Civil Relief [fol. 25] Act.

Finally assuming that House Bill No. 747 imposes a tax on realty not violative of the Soldiers' and Sailors' Civil Relief Act, the assessment of trailers parked on Government-owned property is nevertheless illegal. For under such a hypothesis, the trailers would be part of the federally-owned land. Surely it cannot be contended that federally-owned realty is subject to state taxation in the absence of express congressional consent. (*U. S.* v. *Allegheny County, supra,* at page 177) Congress has not expressly or impliedly consented to the taxation here involved.

Wherefore, it is respectfully requested that the petition be granted in all respects.

Respectfully submitted,

Robert E. Hauberg, United States Attorney, By: Jack McDill, Assistant, P. O. Box 2091, Jackson, Miss.

February, 1963

STATE OF MISSISSIPPI

No. 11939

HOUSE TRAILER REGISTRATION

15 — COUNTY DIST. | 1963 REG. NO. | 461 — LENGTH

Taxing District C 5 C.S. Corp County Copiah

Received of Jesse E. Snopp Box 539 Crystal Springs, Miss.
NAME OF PERSON OCCUPYING VEHICLE — ADDRESS

THE SUM SHOWN BELOW AS REGISTRATION FEE AND AD VALOREM TAXES ON SUBJECT HOUSE TRAILER IN THIS STATE UNTIL NOV. 1ST 1963.

Make of Trailer Skyline 1959 — YEAR MODEL VEHICLE | 10 ft. — WIDTH | 46-3160-Y 59 — SERIAL NO.

Acquired from Southern Mr. Sales Gulfport — NAME — ADDRESS | 5/16/59 — DATE | USE TAX PAID

Trailer Court Parked on Fairgrounds Tr. Court - 253 Crystal St. C Springs — NAME — ADDRESS

Ad Valorem Tax Situs	Valuation	Tax Rate	TAXES Full	TAXES Proration	DAMAGES	TOTAL
State and County Tax	460	5325	2450			
Municipal Taxes	460	2500	11 50			
Municipal Sep. School						
Total Ad Valorem Taxes			36 00			36 00

SUMMARY		
Reg. Fee	2	50
Adv. Taxes	36	00
Damages		
Total	38	50
GRAND TOTAL ALL TAXES & FEES	38	50

Countersigned

Chmn. State Tax Comm.

Dated at Nay. Miss. This 28 day Dec 1963

W. Pinson Sheriff & T. C. Lee D. S.

[fol. 27]

STATE OF MISSISSIPPI
DEPARTMENT OF JUSTICE.
Jackson 5,
February 27, 1963.

Mr. W. D. Neal, Auditor
Department of Public Accounts
New Capitol Building
Jackson, Mississippi

Re: Sgt. Jesse E. Snapp
Application for Tax Refund

Dear Mr. Neal:

An examination of the above-styled application for tax refund reveals that we need additional information in order to properly consider the same.

Please determine where the trailer in question was purchased and the original purchase price thereof. Please, also, determine how the trailer was transported to its present location, if it was not, in fact, purchased at its present site, and the number of places where the trailer has been transported or moved along the highways of the State of Mississippi.

Please have the applicant advise whether the trailer has, in fact, ever been licensed or registered as a motor vehicle in South Carolina or in any other state and what, if any, taxes have ever been paid thereon.

Please, also, have the applicant advise us whether or not South Carolina requires registration of house trailers as motor vehicles as a prerequisite to their being drawn along the highways of that state.

The application includes pictures which we think are incomplete. Please have the applicant submit full pictures of all four sides of the trailer in question.

Applicant's attorneys assert in their memorandum of authority that the tax imposed is not valid insofar as the applicant is concerned because 50 U.S.C. 574 requires only that license, fee or excise required of the state of the residence of the serviceman be paid. Please have them cite authority, federal or state, which prohibits a state from [fol. 28] making the payment of ad valorem taxes a prerequisite to the issuance of a license.

When we have received this additional information, we will be in a better position to consider the application.

Sincerely yours,

JOE T. PATTERSON, ATTORNEY GENERAL

BY Martin R. McLendon
Assistant Attorney General

MRMcL/ljg

[fol. 29]

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF MISSISSIPPI
P. O. Box 2091
Jackson, Mississippi
March 25, 1963

Mr. W. D. Neal, Auditor
Department of Public Accounts
New Capitol Building
Jackson, Mississippi

Dear Mr. Neal:

Re: Sgt. Jesse E. Snapp
Application for Tax Refund

In connection with the Application for Refund of Sgt. Jesse E. Snapp we enclose his Affidavit together with four (4) photographs of each side of his trailer. We request that this letter be considered as a part of your file in making your determination as to the refund.

Since Sergeant Snapp's house trailer is not a "vehicle which is self propelled", it does not come within South Carolina's statutory definition of a "motor vehicle" (So. Car. Code, 1952, §46-2(2)). Therefore, its registration as a motor vehicle, was not a prerequisite to its being drawn along the highways of South Carolina.

A request was made for citation of any authorities, federal or state, bearing on the question whether a state is prohibited from making the payment of ad valorem taxes a prerequisite to the issuances of a license. The question as thus posed by the Attorney General does not fully state the issue here. Rather, the question is whether a state may constitutionally require a nonresident serviceman, as a condition of the issuance of a license permitting him to move his house trailer over Mississippi highways, to forfeit a right to exemption from state and local taxation accorded by federal statute. The following authorities inescapably compel the conclusion that the imposition of such a condition is forbidden by the federal constitution. *Frost & Frost Trucking Co.* v. *Railroad Commission of California,* 271 U.S. 583, 592-599; *Looney* v. *Crane Co.,* 245 U.S. 178, 187, [fol. 30] 188; *Western Union Telegraph Co.* v. *Kansas,* 216 U.S. 1, 36, 38, 48; *Pullman Co.* v. *Kansas,* 216 U.S. 56, 62, 63; *Ludwig* v. *Western Union Telegraph Co.,* 216 U. S. 146.

Yours very truly

ROBERT E. HAUBERG
United States Attorney

By: Jack McDill
ASSISTANT

JR:irr
CC: Department of Justice (2)
Tax Division
General Litigation Section
Washington, D.C.
DJ File: LFO:FBU:WM:LCC
2365;7-25-3

cc: Honorable Martin McLendon
Assistant Attorney General
State of Mississippi
New Capitol Building
Jackson, Mississippi

cc: Honorable John E. Stone
Attorney at Law
State Tax Commission
Woolfolk Building
Jackson, Mississippi

cc: Colonel Sam F. Carter
Staff Judge Advocate
Keesler Air Force Base, Mississippi

[fol. 31]

AFFIDAVIT OF SERGEANT
JESSE E. SNAPP

STATE OF MISSISSIPPI
COUNTY OF COPIAH

Personally came and appeared before me, the undersigned authority at law in and for the County and State aforesaid, SGT. JESSE E. SNAPP, United States Air Force, who, being by me first duly sworn, deposes and says that:

1. I purchased my house trailer from Southern Trailer Sales Company, Greenville, Mississippi, on May 16, 1959, for $5,330.00. Mississippi State Sales tax was paid when purchased. The sales agency moved my trailer for me over a Mississippi highway to a point a few miles outside of Greenville, Mississippi.

The trailer remained at that location until October 1961, when I was transferred to Crystal Springs Air Force Station in October 1961. The trailer was transported from Greenville, Mississippi, to Crystal Springs, Mississippi, over Mississippi Highways by Transit Homes, Inc. It has not been on a Mississippi highway since that time.

2. My house trailer has never been licensed or registered as a motor vehicle in South Carolina or any other state and no taxes have ever been paid thereon except Mississippi sales tax mentioned above.

3. I do not know whether or not my home state, South Carolina, requires registration of house trailers as motor vehicles as a prerequisite to their being drawn over the highways of that state. I have made an inquiry of the Mississippi State Highway Patrol, but it did not have information as to whether or not registration is required. My First Sergeant telephoned an [fol. 32] air force base in South Carolina and was told that such license or registration was not required.

4. Attached are photographs depicting all four sides of my trailer.

Jesse E. Snapp
SERGEANT JESSE E. SNAPP

SWORN TO and subscribed before me this the 13 day of March, A.D., 1963.

Joe W. Telford
JOE W. TELFORD, CAPTAIN, USAF,
SUMMARY COURT OFFICER

Authorized to administer oaths pursuant to 10 USC 936 and AFR 20-16

[fol. 33]

DEPARTMENT OF PUBLIC ACCOUNTS
STATE OF MISSISSIPPI
JACKSON

February 7, 1963

Hon. Robert E. Hauberg
United States Attorney
Post Office Building
Jackson, Mississippi

Re: Application for refund of Ad valorem Taxes by Sgt. Jesse E. Snapp and George E. Wandler

Dear Sir:

We acknowledge receipt of the above captioned application for a refund of ad valorem taxes.

Please send to this office the original or certified copies of the tax receipts to be attached to the applications for presentation to the Attorney General for his approval or disapproval.

Very Truly Yours,

W. D. NEAL, STATE AUDITOR

J. S. McIlwain
Assistant Auditor

JSM: m

[fol. 34]

UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF MISSISSIPPI
Jackson 5, Mississippi
February 8, 1963.

Department of Public Accounts
State of Mississippi
New Capitol Building
Jackson, Mississippi

Re: Application for refund of ad valorem taxes by Sgt. Jesse E. Snapp and Sgt. George E. Wandler

ATTENTION: Hon. W. D. Neal, State Auditor
Hon. J. S. McIlwain, Assistant Auditor

Gentlemen:

Enclosed herewith please find Tax Receipt No. 11344 for Sgt. George E. Wandler and Tax Receipt No. 11339 for Sgt. Jesse E. Snapp, which you requested that we send to you in your letter to us of February 7, 1963.

Very truly yours,

ROBERT E. HAUBERG
United States Attorney

By: Jack McDill
ASSISTANT

JM/jb

Enclosures (2)

[fol. 36]

STATE OF MISSISSIPPI
DEPARTMENT OF JUSTICE
JACKSON 5,

April 4, 1963

Mr. W. D. Neal
State Auditor of Public Accounts
New Capitol Building
Jackson, Mississippi

Re: Application for tax refund of Sgt. Jesse E. Snapp, Box 539, Crystal Springs, Mississippi

Dear Mr. Neal:

The above-styled application for tax refund is based upon an alleged exemption granted by 50 USC App. 574. The provisions of that federal statute deemed pertinent to this application provide as follows:

"(1) For the purpose of taxation in respect of any person, or of his personal property, . . . by any State, . . . such person shall not be deemed to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military orders . . . For the purposes of taxation in respect of the personal property, . . . of any such person by any State, . . . of which such person is not a resident or in which he is not domiciled . . . *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State,* . . . .

"(2) When used in this section, (a) the term 'personal property' shall include *tangible* and *intangible property* (including *motor vehicles*), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *PROVIDED, That the license, fee,*

[fol. 37] *or excise required by the State, . . . of which the person is a resident or in which he is domiciled has been paid."*

It will be noted that the federal statute in question does not grant an exemption from taxation, but it creates a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where it is, in fact, physically located. As regards all other items of personal property, except motor vehicles, the legal fiction thus created is a bar to taxation by a state other than the state of the domicile of the serviceman. *Dameron vs. Broadhead,* 345 U. S. 322, 97 L.ed. 1041.

However, the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid taxes in the state in which he is a resident or domiciled.

This application shows conclusively that no taxes have been paid on this house trailer in any state other than the taxes for which this application for refund is made. The application shows further that the property upon which the tax was paid is, in fact, a motor vehicle. Chapter 535 (H.B #747, Laws of 1962 and Chapter 588, Laws of 1958.

The State of South Carolina wherein the applicant is domiciled requires that each trailer, including "house trailers," shall be registered, licensed and a registration fee paid thereon. Sections 46-2 (13), 46011 and 46-35.3, Code of Laws of South Carolina 1962.

The application shows further that the applicant has failed and refused to register his house trailer under the provisions of Chapter 588, Laws of 1958, which said statute grants to him an exemption from the payment of ad valorem [fol. 38] taxes because of the legal fiction created by 50 USC App. 574. Biennial Report of the Attorney General of the State of Mississippi 1957-59, page 99, a copy of which is attached hereto.

From the foregoing, it is the opinion of this office that the taxpayer was and is liable for the tax paid. Which said payment was made by his own election not to register his motor vehicle in the state of his domicile thereby failing to bring himself within the provisions of the federal statute, or by avoiding the tax by registering his motor vehicle under a statute of this state under which the payment of the taxes is not required. *Whiting vs. City of Portsmouth,* 202 Va. 609, 118 SE 2d 505, supports this view.

It follows that this application for refund should be and the same is hereby disapproved.

Sincerely yours,

JOE T. PATTERSON, ATTORNEY GENERAL

By Martin R. McLendon
Assistant Attorney General

MRMcL/ljg

Enclosure
cc: Hon. John Stone

[fol. 39]

"EXCERPTS FROM 1957-1959 BIENNIAL REPORT OF THE ATTORNEY GENERAL OF MISSISSIPPI—TAXES"

TAXES—ASSESSMENTS: Assessment schedule of motor vehicles that has been finally adopted cannot be altered or amended.

By: McLendon, Assistant

August 8, 1958

This is in reply to yours of August 6, 1958, wherein you advise that the City of Brookhaven has adopted the motor vehicle assessment schedule supplied by the State Tax Commission. You then ask whether or not the city may now rescind its order adopting this schedule and make up an assessment schedule of its own.

It is my opinion that once the assessment schedule has been finally adopted by the city it may not then deviate from the assessment schedule as adopted.

TAXES—ASSESSORS: Assessors should assess taxes upon the record as he finds it and not attempt to determine true condition of the title.

By: McLendon, Assistant

January 22, 1959

This is in reply to yours of January 20, 1959, wherein you ask about the condition of the title to certain Sixteenth Sections of the Chickasaw Cession.

This office is not equipped to determine the statute of the title of these lands. It is my personal understanding that some of the Sixteenth Sections in the Chickasaw Cession were sold to individuals.

For the purpose of assessing these lands for ad valorem taxes you, as tax assessor, must accept the record as it appears and assess the land and improvement thereon at their fair value as compared with the value of surrounding lands. The determination of the true condition of the title is a matter for the Legislature and the Courts to determine.

TAXES—ASSESSORS: Supervisors are not required to pay additional compensation to the assessors, as authorized by Section 4162 of the Code, but may do so at the discretion of the Board.

By: McLendon, Assistant

October 3, 1958

This is in reply to yours of September 29, 1958, wherein you ask whether your Board of Supervisors is required to allow the $1,000 additional compensation authorized to be paid to tax assessors in counties wherein there are more than 25 or more producing oil wells.

Section 4162, Mississippi Code of 1942, Recompiled, authorizes the additional compensation to tax assessors in counties wherein there are 25 or more producing oil wells. This statute only authorizes the Board of Supervisors to pay the additional compensation. If the Board, in the exercise of its discretion, determines that the additional com-

pensation should not be paid it cannot be required to make this allowance.

This statute is not affected by your regular salary statute.

PRIVILEGE TAX—AUTO, ROAD & BRIDGE.

By: McLendon, Assistant

November 26, 1958

This is in reply to yours of November 20, 1958, wherein you ask the following questions:

> "If a person buys a new car and sells his old car to an individual, can he trade his tag in on his new car?
>
> "If a person sells his car to an individual and leaves his tag on the car, can he transfer the tag out of his name?"

In answer to your first question, there is no provision for credit to be allowed for the surrender of a license tag when it is sold to an individual.

In answer to your second question, Section 9352-56, Mississippi Code of 1942, Recompiled, provides that a transfer of ownership of a licensed automobile should be reported to the tax collector or the Motor Vehicle Comptroller, whichever shall have issued the license tag upon said motor vehicle, within seven (7) days after such sale, assignment or transfer.

TAXES—DELINQUENT SALES: Sheriff should proceed to sell property for delinquent ad valorem taxes at the regular time and place for such sales even though the advertisement of such sales contained an error.

By: McLendon, Assistant

September 15, 1958

This is in reply to yours of September 11, 1958, wherein you advise that the advertisement for the sale of property for delinquent ad valorem taxes contained an error as to the date upon which that sale was to be made. You then ask

whether or not the sale should be conducted at the regularly scheduled time.

Section 9923, Mississippi Code of 1942, Recompiled, provides for tax sales to be made on the 3rd Monday of September. This section also provides that an error in the advertisement shall not invalidate a sale made at the proper time and place.

It is therefore the opinion of this office that you should proceed with the sale at the proper time and place as though and as if the error in advertisement had not been made.

TAXES—EXEMPTIONS: Land used exclusively for burial purposes is entitled to tax exemption even though some of the grave sites have not been put in use.

By: McLendon, Assistant

December 23, 1958

This is in reply to yours of December 18, 1958, wherein you ask if there is any way that several acres of land located in your county and developed into a private cemetery may be assessed for ad valorem taxes.

Section 9697 (a), Mississippi Code of 1942, Recompiled, as amended, provides that "all cemeteries used exclusively for burial purposes" shall be exempt from taxation. If the property in question is used exclusively for burial purposes, it is exempt by the statute and cannot be assessed by your office. The fact that some of the grave sites have been bought and not presently in use would not effect the right of the cemetery to be exempt.

TAXES—EXEMPTIONS: Members of the armed forces are not liable for ad valorem taxes on personally owned automobiles not used in business.

By: McLendon, Assistant

July 11, 1958

This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the

armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

Section 574, Title 50, USCA, provides that when a member of the armed forces is in any state in compliance with military or naval orders his " . . . personal property shall not be deemed to be located or present in or to have status for taxes in such state . . . " Section 21 of House Bill No. 3, of the Regular Session of 1958, provides "Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the [fol. 40] legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

It is, therefore, the opinion of this office that members of the armed forces of the United States who are nonresidents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes improved by House Bill No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, provided the automobile in question is not used in any way for a trade or business.

TAXES—EXEMPTIONS: Tax exemptions of National Guardsmen as found in Section 8597, Mississippi Code of 1942, Recompiled does not apply to any tax that is presently being levied.

By: McLendon, Assistant

September 19, 1958

This is in reply to yours of September 17, 1958, wherein you ask what tax National Guardsmen are exempt from by the provisions of Section 8597, Mississippi Code of 1942, Recompiled.

This office has heretofore held that the words " . . . road duty, and road tax and street tax, . . . " as used in the

statute have reference to the commutation tax only. The authority to levy a commutation tax has been repealed by the legislature. The commutation tax is therefore not due from anyone under the statutes as they now exist.

The exemption therefore has no application to taxes presently due or being assessed.

TAXES—POLL, POLL EXEMPTIONS: Receipt for poll tax should show dates of actual payment.

By: Griffin, Assistant

April 16, 1959

I am in receipt of your letter of April 14, 1959, wherein you state that a resident of your county paid his property tax for the year 1957 and called for a poll tax receipt and paid for the same. However, he did not receive it. You request an opinion of this office as to whether or not the Sheriff now has the authority to issue this person a proper dated poll tax receipt for the year 1957.

If this person actually tendered the money to the Sheriff for the payment of his poll tax, then he is entitled to a receipt as of the date of the tender. This is a factual matter for the determination of the Sheriff, subject, of course, to review by the Election Commissioners.

TAXES—EXEMPTIONS: Religious society liable for taxes that are lien against property when the property is acquired.

By: McLendon, Assistant

March 16, 1959

This is in reply to yours of March 14, 1959, wherein you pose the following:

> "Query: For what period is real property taxable when a purchaser acquires title after January 1, and when the said purchaser is exempt under the law?"

In the case of McHenry Baptist Church vs. McNeil, 86 Miss. 22, 38 So. 195, the Court held that where a religious

organization acquired property after the lien for taxes had attached thereto it took same subject to such lien and that the exemption from taxation did not commence except as to taxes which became a lien after the property was so acquired.

It is, therefore, the opinion of this office that real property that is acquired by a religious society that is exempt from the payment of taxes does not become eligible for the exemption until taxes that have become a lien before the property was acquired have been paid. The fact that the contract for the purchase was made before the tax lien date is immaterial to this inquiry.

TAXES—POLL, POLL EXEMPTIONS: Wife of service man may, if out of this state with her husband, vote an absentee ballot without payment of poll tax.

By: Griffin, Assistant

March 28, 1959

I have your letter of March 18, 1959, wherein you request an opinion of this office as to whether or not a serviceman's wife is entitled to vote when she does not hold the proper poll tax receipts.

If the husband is in service and his wife is absent from the state with her husband, and he is a citizen of this state, she is entitled to vote and an absentee ballot and to obtain a poll tax exemption certificate. Sections 3196-01 and 3196-07, Mississippi Code of 1942.

TAXES—HOMESTEAD EXEMPTION: Homesteads of a county may be charged with any levy made for general county purposes in excess of the amount authorized by Section 9879 according to the total assessed value of the county.

By: McLendon, Assistant

October 29, 1958

This is in reply to yours of October 15, 1958, wherein you advise that the assessed valuation of the property of Issaquena County was less than 10% in excess of $5,000,-

000.00 for the year 1957. You advise that you anticipate that the total assessed valuation for the year 1958 will be less than $5,000,000.00.

Your letter then asks if your board of supervisors makes a general county levy of 10 mills, provided for by Section 9879, Mississippi Code of 1942, Recompiled, for counties of less than $5,000,000.00 assessed valuation for the year 1958, will it be subject to being charged for homestead exemption charge-back for the part of the levy in excess of 9 mills.

It is the opinion of this office that it would be proper for the Homestead Division of the State Tax Commission to charge the counties homestead exemptions with any levy in excess of 9 mills, which was authorized by the total assessed valuation of the property of Issaquena County on January 1, 1958.

TAXES—MUNICIPAL: Liability of municipally owned lands for drainage tax.

By: Griffin, Assistant

September 17, 1958

I have your letter of September 10, 1958, wherein you request an opinion of this office if the town of Shelby is liable for drainage tax on municipal-owned lands. It is assumed that this question relates to the payment of assessments for the original improvement, that is, assessments for the original bond issue, because after asking for an opinion on the above you then inquire if the maintenance tax may be levied against the municipality on an acreage basis.

The Supreme Court of Mississippi has answered the precise questions presented here. *In Willie Creek Drainage District vs. Yazoo County,* 209 Miss. 849, 48 So. (2nd) 498, it was held that when a county became the voluntary purchaser of lands located within an established drainage district, which lands had been lawfully encumbered by betterment liens, the county would not acquire the lands free of the liens. This would likewise apply to lands acquired by a municipality after the liens had become effective. So, therefore, if the town of Shelby acquired the land in question

after the assessments had been made, then the town would be liable for the drainage tax until the bonds are paid in full.

[fol. 41]

DEPARTMENT OF PUBLIC ACCOUNTS
STATE OF MISSISSIPPI.
Jackson
April 5, 1963

Hon. Robert E. Hauberg
United States Attorney
Post Office Building
Jackson, Mississippi

Attention Mr. Jack McDill, Assistant

Dear Sir:

The claim for a refund on State Ad valorem Taxes for Sgt. Jesse E. Snapp has been disallowed by the Attorney General.

We are enclosing a photostatic copy of his opinion.

If we can be of further assistance to you, please call upon us.

Sincerely yours,

W. D. NEAL, STATE AUDITOR

J. S. McIlwain
Assistant Auditor

JSM:m

Enclosure

Filed Jul 13, 1963

Boyd Mullen, Chancery Clerk

By Irene Pevey, D.C.

[fol. 42] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

No. 15,670

[Title omitted]

FINAL ORDER—August 13, 1963

This cause came on to be heard on August 9, 1963, after having been set for a hearing in vacation by proper order entered at term time, and the Court having heard and considered the petition for appeal and review, and having studied the record and authorities relied upon by counsel, and having heard oral argument of counsel for petitioner and defendants, doth find that the action of the Attorney General in disapproving the claim shall be affirmed by the Court.

It Is Therefore, Ordered, Adjudged and Decreed that the action of the Attorney General in disapproving the claim for tax refund be and the same is hereby affirmed by the Court for the reasons set forth in the Attorney General's opinion and the authorities cited therein and the additional authority contained in Section 46-100, Code of Laws of South Carolina 1962.

It is further ordered and judgment is hereby entered against the petitioner for all costs of the proceeding, for which let execution issue.

Ordered, Adjudged and Decreed this the 13th day of August, A.D., 1963.

Mike Carr, Chancellor.

[fol. 42-A]
IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
Southern District of Mississippi
P. O. Box 2091
Jackson, Mississippi 39205
October 31, 1963

Honorable Boyd Mullen
Chancery Clerk, Copiah County
Hazlehurst, Mississippi

Re: Sgt. Jesse E. Snapp vs. Honorable W. D. Neal, State Auditor of Public Accounts and Honorable Joe T. Patterson, Attorney General of the State of Mississippi—No. 15670 Chancery Court, Copiah County, Mississippi

Dear Sir:

Please transcribe the entire record of this case which is now on file in your office, and file the complete record in the Supreme Court of the State of Mississippi.

An appeal bond in the Principal amount of Five Hundred Dollars is immediately forthcoming.

Respectfully,

Jack McDill
JACK McDILL
P. O. Box 2091
Jackson, Mississippi 39205
Attorney for Sgt. Jesse E. Snapp

JM/jb

Filed Nov 1, 1963

Boyd Mullen, Clerk

By: Irene Pevey, D.C.

[fol. 43]

UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF MISSISSIPPI
P. O. Box 2091
Jackson, Mississippi 39205
November 1, 1963.

Honorable Boyd Mullen
Chancery Clerk, Copiah County
Hazlehurst, Mississippi

Re: Sgt. Jesse E. Snapp vs. Honorable W. D. Neal, State Auditor of Public Accounts and Honorable Joe T. Patterson, Attorney General of the State of Mississippi—No. 15670 Chancery Court, Copiah County, Mississippi

Dear Sir:

We enclose Appeal Bond in the principal amount of $500.00. We trust that you will find it in order. It will be appreciated if you will advise us when the Transcript has been filed with the Supreme Court.

It will also be appreciated if you will invoice U. S. Air Force for all costs but mail the invoice to our office.

Very truly yours,

ROBERT E. HAUBERG
United States Attorney

By: Jack McDill
ASSISTANT

JM/jb

Enclosure

Filed Nov. 2, 1963.

Boyd Mullen, Clerk.

[fol. 44] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

APPEAL BOND—Filed November 2, 1963

THE STATE OF MISSISSIPPI
COPIAH COUNTY

Know All Men by These Presents, That we, Sgt. Jesse E. Snapp, as principal, and Fidelity and Deposit Company of Maryland, sureties, are held and firmly bound unto The State of Mississippi in the penal sum of Five Hundred and no/100 Dollars ($500.00), for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Signed and delivered the 1st day of November, 1963.

The Condition of the Foregoing Obligation is Such, That whereas, in a cause lately pending in the Chancery Court of Copiah County a decree was rendered against Sgt. Jesse E. Snapp in Vacation on the 13th day of August, 1963, which decree was filed in the office of the Chancery Clerk of Copiah County, Mississippi, on the 14th day of August, 1963, and the said Sgt. Jesse E. Snapp has prayed and obtained an appeal to the Supreme Court without a Supersedeas; Now, if the said Appellant shall well and truly prosecute this appeal to effect in the Supreme Court and pay any court costs and costs of appeal which may be assessed against him then this obligation to be void, otherwise, to remain in full force and effect.

Sgt. Jesse E. Snapp, Principal.

Fidelity and Deposit Company of Maryland, Surety,
By: (Signature illegible), Attorney in Fact.

[fol. 45] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

No. 15,670

[Title omitted]

ENTRY OF APPEARANCE—Filed November 14, 1963

I, Joe T. Patterson, Attorney General, Attorney for the Appellees, in the above styled cause, do hereby waive the service of Citation to the Supreme Court of the State of Mississippi in said Cause and enter my appearance in said Supreme Court of the State of Mississippi.

This 13th day of November, A.D., 1963.

Joe T. Patterson, Atty. for Appellees, by Martin R. McLendon, Assistant Attorney General.

[fol. 46]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

CLERK'S CERTIFICATE

STATE OF MISSISSIPPI
COUNTY OF COPIAH

I, Boyd Mullen, Clerk of the Chancery Court in and for the jurisdiction aforesaid, do hereby certify that the foregoing is a true and correct transcript of the records in Cause No. 15,670, Styled: Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al., as the same appears of record and on file in my office at Hazlehurst, Mississippi.

Given under my hand and the seal of said Court on this the 21st day of November, 1963.

Boyd Mullen, Chancery Clerk, By: Irene Pevey, D. C.

TRANSCRIPT FEES:

Clerk—Section 3934
(Miss. Code of 1942, as amended
by H. B. 433 in 1948).

13,160 words at 25¢ per 100	$32.90
3 Photo Copies at $1.00 each	3.00
Binding Fee to Clerk of Supreme Court	1.00
Bond	1.00
Certificate	.50
Total Clerk	$38.40

Reporters Transcript: *None*
WHICH HAS NOT BEEN PAID

[fol. 48] Clerk's Certificate to foregoing transcript (omitted in printing).
[fol. 49]
STATE OF MISSISSIPPI
COUNTY OF COPIAH

I, Mrs. Ann B. Mullen, Chancery Clerk of State and County aforesaid, do hereby certify that Appeal to the Supreme Court of the State of Mississippi in Cause No. 15,670, Styled: Sgt. Jesse E. Snapp, Petitioner vs. W. D. Neal, et al., was orally requested in open Court on the 13th day of August, A.D., 1963 and heard, and Final Decree of our Court entered on same date. Said Petition for Appeal and Review being referred to in said Final Order, a copy of which is attached hereto.

Given under my hand and seal of office, this 12th day of March, A.D., 1965.

Mrs. Ann B. Mullen, Chancery Clerk, By: Irene Pevey, Deputy Clerk.

[SEAL]

[Stamp—Received Mar. 23, 1965—Office of the Clerk, Supreme Court, U. S.]

[fol. 50] [Clerk's Note: "Final Order—August 13, 1963" is omitted from the record here. It appears on page 40, supra.]

[fol. 52]

IN THE SUPREME COURT OF MISSISSIPPI

No. 43,086

2975

SGT. JESSE E. SNAPP,

v.

Honorable W. D. NEAL, State Auditor of Public Accounts, State of Mississippi and Honorable JOE T. PATTERSON, Attorney General of the State of Mississippi.

OPINION—June 1, 1964

BRADY, *Justice*:

This is an appeal by Sgt. Jesse E. Snapp under and by virtue of Section 1147.2, Mississippi Code of 1942, recompiled, from the final order and decree of the Chancery Court of Copiah County, Mississippi, filed August 14, 1963. The notice of appeal was filed on November 1, 1963. The appellant, under Sec. 9979, Vol. 7A Miss. Code of 1942, instituted the proceedings below to review the disapproval by the State Auditor of Public Accounts and the Attorney General of the State of Mississippi of his application for refund of taxes paid by him on his house trailer. On December 28, 1962, the appellant paid to the Sheriff and Tax Collector of Copiah County, Mississippi, under protest, the exiguous sum of $38.50 in payment of the assessment and levy made on his house trailer under House Bill No. 747, Chap. 535, General Laws of Mississippi (1962). The appellant filed an application for a refund, and on April 4, 1963, the attorney general disapproved it. The state auditor gave notice of the denial of his application on April [fol. 53] 5, 1963. On June 26, 1963, the appellant filed a petition for appeal and review of the denial of his application for refund in the Chancery Court of Copiah County,

Mississippi. On August 13, 1963, the chancellor entered a final order decreeing that the action of the attorney general in disapproving the application be affirmed for the reasons set forth in the opinion of the attorney general in entering judgment against the appellant for costs. From this decree the appellant has appealed to this Court.

The record discloses the following facts:

Since the re-entry of the appellant on October 29, 1951, into the military service, he has been a resident and domiciliary of Pacolet, South Carolina; he is a registered voter there and his relatives are residents of and are domiciled in South Carolina, and he intends to return to South Carolina on completing his military service. On May 16, 1959, the appellant purchased a house trailer in Greenville, Mississippi. This trailer was moved outside of the city of Greenville, Mississippi, and the appellant resided in this trailer until October, 1961. On October 28, 1961, he became an active member of the United States Air Force and was stationed at Crystal Springs, Mississippi. He was assigned as a permanent party, subject to duty elsewhere. His presence in Mississippi is simply in compliance with his military orders. Since before November 1, 1962, he has lived in his house trailer out from Crystal Springs, Mississippi, at the Sojourner Trailer Court, where he was transferred, as stated, from Greenville, by the Transit Homes, Inc. This trailer was moved over the Mississippi highways and the trailer was parked out from Crystal Springs on privately owned property. The trailer is con- [fol. 54] nected with water, sewerage and electricity, which are detachable. It is now resting on concrete blocks but has wheels and it can be moved over the highways but is not self-propelled. This trailer was not registered on November 1, 1962, under the laws of South Carolina or under the laws of any other state, and no taxes have been paid to South Carolina or to any other state for any period beginning on or after November 1, 1962. On December 15, 1962, the Sheriff of Copiah County notified appellant that there had been an assessment and levy of taxes on his house trailer under the House Trailer Ad Valorem Tax

Act which were due on or before November 1, 1962, and that the house trailer would be sold if payment was not made by January 1, 1963. On December 28, 1962, as a result of this notice and under protest, appellant paid the sum of $38.50. On February 4, 1963, an application for a refund of the tax paid and interest was made. On April 5, 1963, the application for the refund of the tax was denied by the attorney general by proper notice, and notice was also given by the state auditor, W. D. Neal, that the application had been denied. On June 26, 1963, petition to review the disallowance of refund was filed in the Chancery Court of Copiah County, Mississippi. On June 28, 1963, the chancellor ordered the state auditor to transmit to the court a certified copy of the record, which was done. On August 13, 1963, after examining the record and hearing oral arguments of counsel, the chancellor entered the final order affirming the action of the attorney general and disapproving appellant's application for refund and entering a judgment against the appellant for costs. It is from this decree and order that this appeal is prosecuted to this Court.

[fol. 55] The basic issue presented by this appeal is whether the chancellor erred in holding that the ad valorem taxes imposed on appellant's house trailer were not barred by Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. This question necessarily involves other related questions which will be taken up in appropriate order.

(I) It is the argument of the appellant that under Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, the situs for taxation of the personal property of a nonresident serviceman is in his state of residence or domicile. Dameron v. Brodhead, 345 U. S. 322; United States v. Arlington County, Commonwealth of Virginia, 326 F. 2d 929 (C. A. 4th); Biennial Report of the Attorney General of Mississippi (1957-1959), pp. 99-100; H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6; H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2.

(II) The appellant further contends that the proviso in Section 574(2) is inapplicable because the taxes levied upon the house trailer of the appellant were ad valorem personal property taxes, not motor vehicle licenses, fees, or excises.

(III) The appellant further contends that the proviso in Section 574(2) is inapplicable because the appellant did not fail to pay the motor vehicle licenses, fees, or excises levied on his house trailer by his state of residence or domicile, since South Carolina had not imposed any such license, fee, or excise on his house trailer.

(IV) The appellant urges that the proviso in Section 574(2) is inapplicable because the appellant's house trailer was not a motor vehicle as that term is used in Section 574(2).

[fol. 56] In order to resolve the basic questions in issue, it is necessary that we review that portion of 50 U. S. Code, App. 574, which has application, and which is as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, . . . by any State, . . . such person shall not be deemed (a) to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military or naval orders, or (b) to have acquired a residence or domicile in any other State, . . . while, and solely by reason of being so absent. For the purposes of taxation in respect of the personal property, . . . of any such person by any State, . . . of which such person is not a resident or in which he is not domiciled, . . . *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State,* . . . (Parenthesis (a) and (b) ours.)

"(2) When used in this section, (a) the term 'personal property' shall include *tangible* and *intangible property* (including *motor vehicles*), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof:

PROVIDED, That the license, fee, or excise required by the State, . . . of which the person is a resident or in which he is domiciled has been paid." (Emphasis ours.)

It can be conceded, we think, that Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, bars the imposition by any state and its political subdivisions of ad valorem personal property taxes on personal [fol. 57] property owned by a nonresident serviceman. It should be noted, also, however, that there is an exception to this general prohibition and that the federal statute in question does not grant a complete exemption from taxation, but it does create a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where he is in fact physically located as regards all other items of personal property, except motor vehicles. The legal fiction thus created is a bar to taxation by another state other than the state of the domicile of the serviceman, which was set forth in Dameron v. Brodhead, 345 U. S. 322, 97 L. Ed. 1041. It is to be noted, however, that the exception in the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid certain taxes in the state in which he is a resident or is domiciled. The exact language is:

"PROVIDED, That the license, fee, or excise required by the State, . . . of which the person is a resident or in which he is domiciled *has been paid* . . ." (Emphasis ours.)

The appellant contends that provision (2) of Sec. 574 is inapplicable because appellant's house trailer was not a motor vehicle as that term is construed and used in provision (2) of Sec. 574. It is to be noted that Congress did not undertake to define motor vehicle when it enacted 50 U.S.C.A., App. 574. Therefore, it should follow that it is logical to apply the definition of the words as used in other federal statutes, to-wit: Title 40, U.S.C.A. 472(1) quotes:

[fol. 58] "The term 'motor vehicle' means any vehicle, self-propelled *or drawn by mechanical power*, . . ." (Emphasis ours.)

Title 49, U.S.C.A. 303(13) reads as follows:

"The term 'motor vehicle' means any vehicle, machine, tractor, trailer, or semitrailer propelled *or drawn by mechanical power* and used upon the highways in the transportation of passengers or property, . . ." (Emphasis ours.)

In 18 U.S.C.A. 31, we find this definition:

"'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes . . . in the transportation of passengers, or passengers and property; . . ."

Since 50 U.S.C.A., App. 574, does not attempt to define the meaning of "motor vehicle", any one of these federal statutes can be used to supply the definition of "house trailer" as being included within the words "motor vehicle", and thus clearly refutes the narrow dictionary definition limiting "motor vehicles" to those that are self-propelled, as urged by the appellant. Mathison v. Brister, 166 Miss. 67, 145 So. 358. Our own statutes, which have definitions relating to motor vehicles, leave no doubt that this definition does include "house trailers". Mississippi's definitions are also controlling upon the courts of the United States by reason of the provisions of 28 U.S.C.A. 1652, which is as follows:

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Con-
[fol. 59] gress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

Therefore, since the Act of Congress, 50 U.S.C.A., App. 574, does not provide a definition for "motor vehicles",

the Mississippi definition of the words to include "house trailers" is conclusive and binding upon both this Court and the federal courts. Furthermore, Sec. 3 of Chap. 588, Laws of 1958, the definition section, appearing as Sec. 10007-03 Miss Code of 1942, Rec., provides in part:

"The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

"(a) The term *'motor vehicle' shall mean any device* and attachments supported by one or more wheels *which is propelled or drawn by any power,* other than muscular power, over the highways, streets, or alleys of this state." (Emphasis ours.)

Sec. 2, Chap. 535 of the Laws of 1962, the definition section, appearing as Sec. 10007-52, Miss. Code of 1942, Rec., provides in part:

"The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

"(a) The term 'house trailer' shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power *not its own,* and which house trailer is not taxed under authority of chapter 588, laws of 1958." (Emphasis ours.)

[fol. 60] The appellant concedes that the house trailer is included within the above definition which is pari materia with chapter 588, supra, which by definition also includes his house trailer. It is to be noted that notwithstanding the inclusion of his house trailer within the terms of both the statutes quoted above, appellant has not registered the house trailer or paid any tax thereon during the period of his ownership of the trailer, although it has been drawn along the highways of this state whenever the need arose and is readily capable of being drawn along

the highways of this state whenever the need arises again, or whenever the appellant desires to do so. We think, therefore, that the fourth contention of the appellant, that his house trailer was not a motor vehicle as that term is used in Sec. 574(2), is not well taken, nor do we believe that his third contention, that Sec. 574(2) is inapplicable because the appellant did not fail to pay the motor vehicle license fees and excises levied on his house trailer by his state of residence or domicile since South Carolina had not imposed any such license fee, or excise on his house trailer. The invalidity of contentions (II) and (I) will be hereinafter shown. We assert that it is clear that this section of the act contemplates that the personal property, which is exempt provided a license fee or excise is paid to the state in which the appellant resides, will be located in said state or that said state will have such jurisdiction or control over the trailer or motor vehicle that the license, fee or tax or excise which is due and owing will be paid. It can scarcely be conceded that a legal fiction can give a state the right to tax nonexistent property, that is, property which has never been within the jurisdiction of the state. In order for a [fol. 61] state to require the payment of a license or fee or excise on property, the property must be located in the state, or must have been used in the state, and must have become subject to the operation of the state laws involved. The appellant's house trailer here has never been out of the state of Mississippi. It was purchased in this state, has remained in this state, traveled the highways of this state, and has never been in the state of South Carolina. While South Carolina does not require a license fee or excise on his house trailer, still the second paragraph of Sec. 574 of Title 50 U.S.C.A., App., clearly stipulates that the legal fiction created in the first paragraph will not and shall not apply to motor vehicles *unless the serviceman has in fact paid the license fee or excise required by the state in which he is domiciled.* This exception to the blanket immunity granted in the first paragraph shows that the clear and un-

mistakable congressional intent was that the motor vehicles of servicemen should be registered according to the laws of the state of his residence, or of some state, regardless of where they may be located, and this is true even though perhaps a license, fee or excise on the trailer is not required by that state. It does not excuse the serviceman from registering the trailer in his home state. Code of South Carolina of 1962, Sec. 46-2(13) provides as follows:

"(13) TRAILER: Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle; . . . "

Sec. 46-11 provides:

"VEHICLES REQUIRED TO BE REGISTERED AND LICENSED.—Every motor vehicle, trailer, semitrailer, pole trailer and [fol. 62] special mobile equipment vehicle driven, operated or moved upon a highway in this State *shall be registered and licensed in accordance with the provisions of this chapter.* It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter." (Emphasis ours.)

Section 46-35.3 provides:

"FEES FOR HOUSE TRAILERS.—For every house trailer, the annual fee shall be six dollars. The Department shall classify as a 'house trailer' every trailer or semitrailer which is designed, constructed and equipped as a dwelling, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets or highways, or a trailer or semitrailer of similar nature whose chassis and exterior shell is designed and

constructed for use either permanently or temporarily for advertising, sales, display or promotion of merchandise or services or for any other commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier. The Department may not license and register a house trailer which exceeds the permissible size limitations prescribed in Sections 46-654, 46-657 and 46-657.1, but such house trailers which may be permitted to be moved over the highways by the Department under special permits issued pursuant to Section 46-667 to 46-667.3 shall pay to the Department a fee of five dollars per trip."

It is apparent, therefore, that the state wherein appellant claims to be domiciled, namely, South Carolina, [fol. 63] does, in fact, require the registration of the house trailer as a motor vehicle. Assuming the operation of the legal fiction, then this requirement of the laws of South Carolina has not been complied with in any way by the appellant. Appellant further admits that the statutes quoted above require the registration of his house trailer in South Carolina if it, in fact, was physically located in the state. He asserts that the statutes of the state in which he is domiciled do not apply because the house trailer was, in fact, located in Mississippi during the entire taxing period, and then paradoxically he seeks to have this Court void the collection of the tax by Mississippi because the provisions of 50 U.S.C.A., App. 574, provide that the legal status of the house trailer for tax purposes is in South Carolina. It is the reasoning which was urged in the case of *Whiting* v. *City of Portsmouth,* 202 Va. 609, 118 S. E. 2d 505, wherein the Supreme Court of Virginia rejected this theory. Accordingly, this theory is rejected by this Court.

In passing, all the appellant had to do to avoid the tax in question in Mississippi was to register his motor vehicle in Mississippi under the laws specifically granting him the tax exemption. This the appellant neglected or refused to do. Chapter 588, Laws of 1958, was passed by the Mississippi Legislature to implement the amendment

of Section 112 to the Mississippi Constitution of 1890, and to thereby provide a special method of assessment and collection of taxes on motor vehicles. In recognition of the federal statutes, Sec. 574, supra, and the legal fiction created thereby, the legislature in enacting Chap. 588, supra, provided in Sec. 21 thereof, that:

"Any motor vehicle driven over the highways of this [fol. 64] state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

Upon proper inquiry the office of the appellee, the Attorney General, held on July 11, 1958, that such vehicles were not liable for ad valorem taxes provided they were registered in this state. The opinion is published in the biennial report of the Attorney General of Mississippi, 1957-1959, on pages 99 and 100, and provides as follows:

"TAXES—EXEMPTIONS: Members of the armed forces are not liable for ad valorem taxes on personally owned automobiles not used in business.

"By: McLendon, Assistant

"July 11, 1958

"This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

"Section 574, Title 50, U.S.C.A. provides that when a member of the armed forces is in any state in compliance with military or naval orders his ' . . . personal property shall not be deemed to be located or present in or to have status for taxes in such state . . .' Sec. 21 of H. B. No. 3, of the Regular Session of 1958, provides 'Any motor vehicle driven over the highways of this state to

the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the legal situs of such motor vehicle is [fol. 65] located in another state, shall be exempt from ad valorem taxes authorized by this act.'

"It is, therefore, the opinion of this office that members of the armed forces of the United States who are nonresidents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes imposed by H. B. No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, provided the automobile in question is not used in any way for a trade or business."

The appellant, therefore, notwithstanding the specific requirements of the federal act that motor vehicles be registered in the state of the domicile of the serviceman in order to be entitled to tax immunity and the specific provisions of the law of South Carolina that the house trailer be registered in that state, appellant proceeded to operate the house trailer on the highways of Mississippi whenever the need arose. He, also, failed and refused to register his house trailer under the Mississippi act specifically granting to him an ad valorem tax exemption, and which such registration would have specifically granted to him an exemption from the tax paid in this case, Sec. 10007-58(a), Miss. Code of 1942, Rec.

We feel, therefore, that this appellant has deliberately avoided or more properly has waived any and all claims to tax immunity that he might have heretofore enjoyed. This is, of course, an ad valorem tax, the statute so provides it, and makes the payment of the ad valorem tax a condition precedent to the registration of the motor vehicle. This the appellant could have avoided had he complied [fol. 66] with the laws of the state of South Carolina, the laws of the state of Mississippi, and the federal laws pertaining thereto. Section 574 of 50 U.S.C.A. does not prohibit the levy of an ad valorem tax on motor vehicles un-

less the serviceman claiming the tax immunity has complied with the laws of the state of his domicile. This the appellant has clearly failed to do. The second paragraph of Sec. 574 provides specifically:

" . . . (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: PROVIDED, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

By stipulating expressly that the taxation should not be limited to privilege and excise taxes, it necessarily follows that the prohibited tax must include the only other general branch of taxation, that is, ad valorem. It is emphasized that the federal statute is meant to include ad valorem taxes as being one of the taxes for which the serviceman is *immune, provided he complies with the laws of his home state concerning registration of the motor vehicle.* If he fails to so comply, as was done in this case at bar, he is no longer entitled to protection of the Act of Congress. The failure of the appellant here to comply with the federal law, the law of his home state of South Carolina, or the law of the state of Mississippi, in which he has been residing for the past several years, granting him an ad valorem tax exemption, we feel that by his acts in this regard he has waived his right or claim of any nature which he may have had insofar as exemption from [fol. 67] taxation is concerned.

"One who claims exemption from taxation has the burden to show that all the conditions on which the exemption was based have been at all times fulfilled." Yazoo & M. V. Railroad Co. v. Adams, 81 Miss. 90, 32 So. 937.

" . . . one claiming exemption from taxation has the burden of showing that the claim comes clearly within the exemption law, unaffected by other statutes which clearly renders the property subject to a lien for the assessment . . . " Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498.

" . . . when anyone is claiming the benefit of an exception under a statute, the proof must be clear that the one claiming the benefit of an exception comes clearly within the same." Trunkline Gas Co. v. Mississippi State Tax Commission, 238 Miss. 591, 119 So. 2d 378.

"Exemptions from taxation are strictly construed, and never presumed, and person claiming exemption had burden to establish his right thereto." Jackson Fertilizer Co. v. Stone, 173 Miss. 183, 162 So. 170.

In 84 C. J. S., Taxation, Sec. 224, p. 431, we find:

"One entitled to the benefit of a grant of exemption must in some way manifest his acceptance of the grant, in order to obtain immunity under it, and in particular must comply with all valid and reasonable conditions imposed by statute; and the same rule applies to a statute commuting taxes or providing for the payment of a gross-earnings tax or other special tax in lieu of general taxation. Such conditions include the planting of forest trees on the exempted land, or the making of a list or return of one's property to the assessors, or the filing of an [fol. 68] affidavit, such as an affidavit with respect to the value of the property for which an exemption is claimed."

Section 225 of the same work provides:

"Since taxation is the rule and exemption is the exception, and since exemptions from taxation are not favored, the general rule is that a grant of exemption from taxation is never presumed. On the contrary, since the relinquishment of the power to tax is never presumed, . . . the presumption is against exemption from taxation and in all cases of doubt as to the legislative intention, or as to the inclusion of particular property within the terms of the statute, the presumption is in favor of the taxing power, and the burden is on claimant to prove or establish clearly his right to the exemption, bringing himself clearly within the terms of such conditions as the statute may impose. Accordingly, one claiming in any form of action or

proceeding that his property is exempt from taxation must offer in proof facts and circumstances in support of his claim."

Appellant has obviously made no attempt to comply with the federal act granting him a right to tax exemption by registering his house trailer in the state in which he claims he is domiciled. In fact, to the opposite, he argues in this case that such registration by his state is not required. It is obvious, also, that he has failed to take advantage of the opportunity to register the house trailer in Mississippi under statutes specifically granting to him an ad valorem tax exemption, and he bases and predicates his failure to do so on the ground that such registration was not required because the house trailer was not drawn along the highways. This argument is of no merit because of the undisputed facts, admitted by the appellant through [fol. 69] his attorney, that the house trailer has been drawn over the highways of this state. It appears, therefore, that paragraph 1 of Sec. 574, insofar as the situs for taxation of personal property of a nonresident serviceman being in his state of residence or domicile is concerned, is not involved in the case at bar, since the case at bar is involved under provision 2 of Sec. 574, which is the exception to the general rule and which requires that the serviceman comply with the conditions of Sec. 2 before exemption from taxation is permissible in a state other than the state of his domicile.

In conclusion, the state of Mississippi has a right, recognized by Congress, to require the registration of all motor vehicles that use, or are capable of using, the public highways of this state. This authority does not abridge the rights of citizens to equal protection granted by the Fourteenth Amendment to the United States Constitution. Kane v. New Jersey, 242 U. S. 160, 61 L. Ed. 222; Hendrick v. Maryland, 235 U. S. 610, 59 L. Ed. 385; Blashfield, Cyclopedia of Automobiles & Practice, Vol. 1, pp. 470-473; Roberts v. Federal Land Bank of N. O., 189 Miss. 989, 196 So. 763; State v. Lawrence, 108 Miss. 291,

66 So. 745; Ann. Cas. 1917E, 322; Title 50 U.S.C.A., App., Sec. 574.

The registration of motor vehicles by the owners thereof is one of the most important safeguards which a state can have in operating its internal affairs and in maintaining peace and order. We do not believe that Congress intended by enactment or extension of the Soldiers' and Sailors' Civil Relief Act of 1940 to rob the states of their right to require registration of motor vehicles or to abolish the taxation thereof, which will happen here if the appellant's contention is to prevail. The act does not grant [fol. 70] unto the appellant immunity from all taxation or make him, because of his military service connection, a tax untouchable, which is substantially what the appellant claims. It is evident that the intention of the Congress in extending the life of the Soldiers' and Sailors' Relief Act of 1940 was not to exempt members of the armed services from all motor registration and taxation laws, giving them federal esoteric immunity from these taxes reserved to the states, but to prevent multiplicity of tax assessments against the soldiers and sailors by the states into which they are required to reside, or duplicity of tax payments. Having failed to avail himself of the exemption granted by the federal statutes, or the statutes of the state of South Carolina or the state of Mississippi, it follows that the learned chancellor was correct in holding that the appellant was liable for the tax on his house trailer, and the decree of the Chancery Court of Copiah County denying the application of the appellant for a tax refund is affirmed.

Affirmed.

Kyle, P.J., and Ethridge, Rodgers and Patterson, JJ., concur.

[fol. 71] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 72]

IN THE SUPREME COURT OF MISSISSIPPI

State of Mississippi

To the Honorable the Chancery Court, of Copiah County —Greetings:

Whereas, on the 1st day of June, 1964 (the same being a day of the regular term of our Supreme Court, begun and held in the Court room, in the Capitol, in the City of Jackson, in said State, on the 1st Monday of March, in the year of our Lord, 1964, the following final decree was rendered by our Supreme Court, to-wit:

No. 43,086

SGT. JESSE E. SNAPP,

vs.

W. D. NEAL, State Auditor, et al.

JUDGMENT—June 1, 1964

This cause having been submitted at a former day of this Term on the record herein from the Chancery Court of Copiah County, and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge and decree that the decree of said Chancery Court rendered in this cause on the 13th day of August, 1963—be and the same is hereby affirmed. It is further ordered and adjudged and decreed that the appellees do have and recover of and from the appellant and Fidelity and Deposit Company of Maryland, surety on the appeal bond herein, all of the costs of this appeal to be taxed, for which let proper process issue.

(Minute Book "BN", page 181)

You Are Therefore Hereby Commanded, That such execution and further proceedings be had in said cause, as according to right and justice, and the judgment of our Supreme Court and the law of the land ought to be had.

Witness, the Hon. Percy M. Lee, Chief Justice of our Supreme Court; also the signature of the Clerk and the Seal of said Court hereunto affixed, at office, at Jackson, this the 9th day of March, A.D., 1965, Julia H. Kendrick, Clerk, By Yvonne Burnham, D.C.

(Seal)

[fol. 73] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 74]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

SGT. JESSE E. SNAPP, Petitioner,

vs.

NEAL, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—August 28, 1964

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 30, 1964.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 28th day of August, 1964.

[fol. 75]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

SGT. JESSE E. SNAPP, Petitioner,

vs.

NEAL, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—October 1, 1964

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled case be, and the same is hereby, further extended to and including October 29, 1964.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 1st day of October, 1964.

[fol. 76]

SUPREME COURT OF THE UNITED STATES

No. 632—October Term, 1964

SGT. JESSE E. SNAPP, Petitioner,

v.

HONORABLE W. D. NEAL, State Auditor, et al.

ORDER ALLOWING CERTIORARI—March 8, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of Mississippi is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.